IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

F.A.O. Nos.435 of 2002 and 330 of 2003

Judgment reserved on:15.9.2006

Date of decision : 12.10.2006

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1. FAO No. 435 of 2002
Master Pushkar Garg **Appellant**

Versus

Manjit Singh and another **Respondents**

Mr.K.D.Sood, counsel for the appellant.

Mr.Sunil Goel, counsel for respondent No.1.

Mr.Lalit Sharma, counsel for respondent No. 2.

2.FAO No. 330 of 2003
Manjit Thakur **Appellant**

Versus

Master Pushkar Garg and another **Respondents**

Mr.Sunil Goel, counsel for the appellant.

Mr.K.D.Sood, counsel for respondent No. 1.

Mr.Lalit Sharma, counsel for respondent No. 2.

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Deepak Gupta, J.

Claimant Pushkar Raj is a minor. On 19.9.1994 when he was just about 4 years old he was hit by a Gypsy bearing No. HP-08-004, owned by Manjit Singh Thakur. The petitioner was walking towards school when he was hit by the Gypsy from behind. He was shifted to Civil Hospital, Rohru and then referred to Indira Gandhi Medical College, Shimla. In the accident the petitioner is alleged to have suffered head injuries and injuries in the ear which have led to severe impairment of his hearing and it is also alleged that his mental faculties have been impaired. It is further alleged that due to the accident he has developed some psychiatric problems.

Manjit Singh Thakur filed a reply and did not deny the accident. The stand taken was that the petitioner, all of a sudden, came into the middle of the road and struck against the Gypsy. It was further alleged that the vehicle was insured with the Oriental Insurance Company, Shimla and the liability, if any to pay the compensation, was that of the Insurance company. The Insurance Company denied the factum of insurance itself. The learned tribunal awarded a sum of Rs.75,000/- as compensation to the petitioner and held Manjit Singh liable to pay the said amount. The Insurance Company was exonerated

on the ground that since there was no material on record to show that the vehicle was insured with the Insurance Company.

Against this award, two appeals were filed. FAO No. 435 of 2002 has been filed by the claimant. Two applications being CMP Nos. 173 and CMP No. 619 of 2006 have been filed to place on record certain documents showing the nature of treatment and expenses incurred on the treatment of the claimant as well as to show the extent of disability suffered by the claimant. In FAO No. 330 of 2003 the appellant Manjit Singh has filed CMP No. 199 of 2006 and alongwith it a copy of cover note has been filed to show that the vehicle was insured with the Oriental Insurance Company. The driving license of one Om Parkash, who was allegedly driving the vehicle at the time of the accident, has also been filed and certain other verification certificates with regard to the license and the Registration Certificate of the vehicle have been filed.

All these applications for additional evidence have been heard. The Insurance Company has not denied the validity of the cover note, but according to it the owner cannot be permitted to make good the lacunae in the case at this belated stage. The Insurance Company has also denied the correctness of the driving license produced.

I have heard learned counsel for the parties and am of the view that the cover note can be read in evidence since the same has been admitted by the Insurance company. Similarly, the documents filed by the claimant are being taken into consideration while assessing the compensation. There is no dispute that the claimant was only about 4-5 years at the time of the accident. No negligence could have been attributed to him and the learned tribunal had rightly held that it was the driver of the Gypsy who was negligent.

As far as the injuries are concerned, it would be pertinent to mention that unfortunately the case has not bee properly handled on behalf of the claimant. The evidence led by the claimant is only in respect of the treatment undergone in the year 1994 and thereafter the treatment record is for the year 2000 and beyond. There is no record of treatment for the intervening 6 years between 1999 to 2000.

PW-1 Dr.Ravi Chand, who is Professor and Head of Department of Psychiatric Department of Indira Gandhi Medical College, Shimla has stated that he has been treating the petitioner and according to his diagnosis the petitioner is suffering from prolonged depressing reaction, night terror with multiple somatic features. He has treated the petitioner for a long period and according to him the memory of the claimant

has been adversely affected and which may have an adverse impact on his studies. He, however, has stated that this illness may take six months to one year to cure. In cross examination he has admitted that the injuries caused to the petitioner are curable.

PW-2, Dr.Ramesh Azad, is the Registrar, E.N.T., Indira Gandhi Medical College, Shimla. He states that the right ear of the claimant has been damaged and he has assessed the disability at 22% to the right ear. He states that an operation had to be conducted on the claimant. He has also admitted that the injury caused to the petitioner is curable.

PW-3, Dinesh Kumar is the father of the claimant and according to him his child suffered head injuries in the accident. He states that he has spent Rs.50,000/- on the treatment of the claimant and in addition to that he has spent a large amount on transportation. He states that the claimant remained in a state of unconsciousness for 5-6 months and has still not fully recovered even after 7 years. He has proved certain prescription slips from the P.G.I., Chandigarh. PW-4 is the claimant himself.

Ex.PW-3/B is the discharge slip which shows that the claimant was admitted in I.G.M.C., Shimla on 20.8.1994 and was discharged the very next day. The diagnosis is that he

had suffered head injury. He remained under treatment and the last record of treatment is of 2nd September, 1994 and he has been referred to E.N.T., OPD. Mark `A' is the photo copy of the OPD slip showing that the petitioner remained under treatment at PGI, Chandigarh and has suffered hearing loss in the right ear and also complained of screaming in sleep following the accident. This treatment slip pertains to the year 2001. With the applications in the present court, the applicant has filed certain record showing that he was suffering from ear problem and has been prescribed medicines and was getting treatment for the same. With the second application, the disability certificate has been filed in which it is mentioned that the hearing loss is 10% and there is mild mental retardation and the disability has been assessed at 40%.

After going through the entire evidence on record I am of the view that the claimant has been able to prove that the hearing injury is relatable to the accident. With regard to the mental injuries, there is no cogent or direct evidence to show that it is relatable to the injuries sustained in the accident. However, in the accident, the claimant did suffer a head injury, but none of the doctors have clearly stated that it is this head injury which resulted in forgetful etc. It has to be kept in mind that from the record for treatment which has been placed on

record it is not possible to co-relate the disabilities now complained of with the injuries sustained in the accident, except for the ear injury which clearly is relatable to the accident. However, the claimant has proved that for the ear injry alone he has been getting treatment for the last almost 10 years. The claimant and his parents live in Rohru. They had to come to Shimla and Chandigarh for treatment. Keeping in view all these facts, the amount awarded by the learned tribunal is very low. Even if the hearing loss of the claimant is taken into consideration, it is clear that this young boy of 4 years suffered an injury which has made him hearing impaired for the rest of his life. Therefore, only on account of pain and suffering, he is entitled to Rs.30,000/-. This child shall have to live with this disability throughout his life. His marital prospects have been impaired. He may not be able to get a job easily. It is also apparent that the petitioner is suffering from some psychiatric problem which results in him suffering night terrors after the accident.

Keeping in view all these facts I feel that the claimant is entitled to Rs.1,00,000/- on account of future discomfort, loss of amenities, future loss of earning capacity, loss of marital prospects etc. Though complete material has not been placed on record, keeping in view the fact that the

claimant has been under treatment for almost 10 years and had to go to Shimla for treatment, it would not be unreasonable to award him a sum of Rs.50,000/- on account of medical treatment, transportation expenses, attendant charges etc.

The compensation is, therefore, enhanced from Rs.75,000/- to Rs.1,80,000/-. The claimant shall also be entitled to interest on this amount at the rate of 9% per annum w.e.f. the date of filing of the claim petition till payment/deposit of the amount. Since the vehicle was insured with the Oriental Insurance Company, the Insurance Company shall deposit the entire awarded amount in the Registry of this court within 12 weeks from today.

As far as the dispute between the Insurance Company and the insured is concerned, the fact whether the driver held a valid license or not and what is its effect can best be decided by the learned tribunal. Therefore, the case is remanded to the learned tribunal only to decide the inter se dispute between the insured and the Insurance Company. The claimant need not appear before the tribunal and shall not be called there. The tribunal shall permit the Insurance Company to file amended written statement since proof of insurance has only been produced at the stage of appeal. After framing issues and recording evidence the tribunal will decide whether there

has been any such breach of policy and whether the Insurance Company can recover the amount from the insured or not.

In view of the above discussion the appeal filed by the claimant being FAO No. 435 of 2002 is allowed and the award of the learned tribunal is modified and the claimant is held entitled to compensation of Rs.1,80,000/- alongwith interest, as aforesaid. The appeal filed by the owner is also partly allowed and it is held that the vehicle is insured with the Oriental Insurance Company, but the question as to whether there has been any breach of policy shall be decided by the learned tribunal. The owner and the Insurance Company, through their counsel, are directed to appear before the learned tribunal on 20th November, 2006. The Registry shall ensure that the record reaches the trial court well before the said date.

CMP Nos. 173/06, 619/06 and 199/06

All these applications for leading additional evidence are disposed of in terms of the above judgment.

October 12, 2006(K) (Deepak Gupta), Judge